

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

LYLE GADDY, KIERRE WIGGINS, KENDALE  
GETAW, KYLE PORTERFIELD, MICHAEL  
RENON, et al.,

**MEMORANDUM & ORDER**  
19-CV-118 (EK) (SIL)

Plaintiffs,

-against-

TRI-STATE AREA MOVING CORP., COACH  
FURNITURE SERVICES, INC., GAVRIEL  
AVGI, et al.,

Defendants.

-----x

ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Steven Locke's *sua sponte* Report and Recommendation ("R&R") dated July 1, 2022. ECF No. 68. Judge Locke recommends that (1) I dismiss the claims brought by plaintiffs Lyle Gaddy, Kendale Getaw, Kyle Porterfield, Taron Smith, and Marcus Bird without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b), and that (2) such dismissal become with prejudice as to each plaintiff if they do not seek to appear within sixty days of this order. No party has filed objections, and the time to do so has expired. Accordingly, the Court reviews Judge Locke's recommendation for clear error on the face of the record. See Fed. R. Civ. P. 72(b) advisory committee's note to 1983

addition; accord *State Farm Mut. Auto. Ins. Co. v. Grafman*, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013).

Having reviewed the record, I find no clear error and therefore adopt the R&R in its entirety, with one clarification. The claims brought by plaintiffs Lyle Gaddy, Kendale Getaw, Kyle Porterfield, Taron Smith, and Marcus Bird are dismissed without prejudice. Such dismissal shall become with prejudice as to each plaintiff if they do not file an application to restore their claims within sixty days of this order.

SO ORDERED.

/s/ Eric Komitee  
ERIC KOMITEE  
United States District Judge

Dated: January 23, 2023  
Brooklyn, New York